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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 140

NATHAN WILLNER, PETITIONER,

vs.

COMMITTEE ON CHARACTER AND FITNESS, ETC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED MAY 23, 1962
CERTIORARI GRANTED JUNE 25, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

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COMMITTEE ON CHARACTER AND FITNESS, ETC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

INDEX

	Original	Print
Record from the Appellate Division of the Supreme Court of New York, First Department	A	1
Notice of motion	1	2
Petition for leave to file application for admission to the Bar	15	13
Order denying motion for leave to file application for admission to the bar	16	13
Notice of motion for order granting leave to appeal to the Court of Appeals	17	14
Affidavit of Nathan Willner	19	16
Order denying motion for leave to appeal	Proceedings in the Court of Appeals of New York	
Notice of motion for leave to appeal	20	17
Petitioner's moving affidavit	22	18
Order granting leave to appeal	29	23
Notice of order granting leave to appeal	30	24
Order of affirmance	31	25
Remittitur	32	25
Order amending remittitur	36	27
Order allowing certiorari	37	28
Order denying motion of respondent to dismiss the writ of certiorari	38	29
<i>Supplement to record</i>		26

RECORD PRESS, PRINTERS, NEW YORK, N. Y., NOVEMBER 21, 1962

[fol. A]

IN THE
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION—FIRST DEPARTMENT

In the Matter of the Application of
NATHAN WILLNER, Petitioner,
for an Order permitting him to file his Application
for Admission to the Bar.

NOTICE OF MOTION—Dated May 22, 1961

Sirs:

Please Take Notice, that upon the Petition of Nathan Willner, dated and verified the 22nd day of May, 1961, and upon the papers and proceedings heretofore had herein, the undersigned will move this Court, at a Stated Term for Motions, to be held at the Appellate Division Court House, 25th Street and Madison Avenue, Borough of Manhattan, New York City, on the 6th day of June, 1961 at 1:00 o'clock in the afternoon of that day, for an order, granting the Petitioner leave to file his application for admission to the Bar of the State of New York, pursuant to Rule 1(e) of the Rules of Civil Practice, and

For such other and further relief, as the Court may deem just and proper.

Dated: New York, the 22nd day of May, 1961.

Yours, etc.,

Nathan Willner, in Pro Se, 345 East 52nd Street,
Borough of Manhattan, City of New York.

To: The Committee on Character and Fitness.

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

[Title omitted]

PETITION FOR LEAVE TO FILE APPLICATION FOR ADMISSION
TO THE BAR

To the Honorable Justices of the Appellate Division—
First Judicial Department:

The Petition of Nathan Willner respectfully shows to
this Honorable Court and alleges:

1. This Petition is made by me to obtain leave to file my Application for Admission to the Bar, pursuant to Rule 1(e) of the Rules of Civil Practice.
2. I reside at No. 345 East 52nd Street, in the Borough of Manhattan, City and State of New York.
3. I am a citizen of the United States of America, by reason of my birth in the United States. I am a resident of the State of New York, and have been such resident for more than six months prior to the date of the verification of this Petition.
4. I am over the age of twenty-one years, to wit, of the age of sixty (60) years, having been born on November 7, 1900.
5. I am a Certified Public Accountant, having been duly licensed as such by the State of New York on January 2, 1936; my license Certificate bears number 5245, and my said license has never been revoked or suspended.
6. I am now and have been since May 15, 1951, a member in good standing of the New York State Society of Certified Public Accountants. I am now, and have been since December 11, 1951, a member in good standing of the American Institute of Accountants, which is the recognized National organization of Certified Public Accountants.
7. I graduated from the School of Commerce of New York University in 1923, with the Degree of Bachelor

[fol. 2]

of Commercial Science, and from the Law School of New York University in 1930, with the Degree of Bachelor of Laws, and in 1934 with the Degree of Master of Laws from the same school.

8. I passed the required written examinations for admission to the Bar, and was duly certified as qualified by the State Board of Law Examiners on or about October 29, 1936. In 1937, I filed my questionnaire and statement with the Committee on Character and Fitness. Several hearings on my application were had before the Committee on Character and Fitness on various dates, but my application for admission was not acted on favorably, and in October, 1938, the Committee on Character and Fitness filed with this Court its determination that it is "not satisfied and cannot certify that the applicant possesses the character and general fitness requisite for an attorney and counselor at law, as provided by Section 88 of the Judiciary Law", without stating any sufficient reason, excuse or standard. The conclusion was entirely based upon an impression and not on any valid determination.

9. On January 26, 1943, I applied to this Court for an Order directing the Committee to review its determination of October 1938. The motion was denied, *without opinion*.

10. On January 20, 1948, I petitioned this Court for an Order directing the Committee on Character and Fitness to re-examine my application, or, in the alternative, permitting an application *de novo* to be filed by me. This petition was granted by this Court to the extent of permitting me to file an application *de novo* with the Committee on Character and Fitness.

[fol. 3] 11. After I filed such application *de novo*, hearings were had before the Committee on July 16, 1948 and on November 10, 1948, after which the Committee again refused to certify me for admission to the Bar, by its Report of June 9, 1950, without stating any sufficient reason, excuse or standard.

12. Thereafter, in order to determine the reason, excuse or standard or even the impression, on April 10, 1951 I

petitioned this Court for an Order (1) directing the Clerk of this Court to enter my name as an attorney and counselor at law on the Roll of Attorneys and Counselors, (2) directing the Committee on Character and Fitness to file a statement of the reasons upon which the Committee based its refusal to certify me, and (3) appointing a Referee to hear and report upon the evidence taken before, as whether I possess the character and fitness entitling me to be admitted. The motion was denied, *without opinion*.

13. On the 1st day of May, 1954, I petitioned this Court for an Order permitting me to file an application for admission to the Bar *de novo*. By resettled Order, dated the 18th day of May, 1954, my application was denied *without stating any reasons whatever*. Leave to appeal from the said resettled Order was denied by this Court and by the Court of Appeals. Thereafter, an application for a Writ of Certiorari to the Supreme Court of the United States was denied *without giving any reason, excuse or standard*.

14. On the 6th day of September, 1960, I petitioned this Court for an Order permitting me to file an application for admission to the Bar *de novo*. This petition was denied by order dated November 2, 1960, *without giving any reason, excuse or standard*.

[fol. 4] 15. Although less than a year has elapsed since the denial of my last application, I feel so strongly concerning the merits of my case that I ask the Court to carefully consider the reasons which I gave in my last application and to consider some of the background which is stated in this application for the *first time*. I hesitated to make the accusations that I do make herein until I felt I had no other recourse. At this time I feel that this is my last opportunity to present all of the facts surrounding the various hearings and do so with the hope that the Court will recognize the basic injustice that has been done to me.

16. I ask the Court to consider the following:

a) That I am a member in good standing of the New York Society of Certified Public Accountants, and have been such since 1951.

- b) That I am a member in good standing of the American Institute of Accountants, and have been such since 1951.
- c) That I was admitted to the Tax Court of the United States in 1928, and remain at present in good standing.
- d) That I hold a Treasury Card which entitles me to practice as an accountant before the United States Treasury Department since 1928, and remain in excellent standing there.
- e) That, if admitted to the Bar, I can be of material help to many of my accounts in the ever expanding field of taxation and its related legal problems, which, of course, I cannot handle unless I am admitted as an attorney.
- f) That I have conducted my life in a proper, decent and circumspect manner, and I stand ready to with-
[fol. 5] stand the closest scrutiny of my life and activities. In fact, I seek and welcome such opportunity in order to establish my present character and fitness, as it affects my admissibility to the Bar.

17. The basic facts concerning the background of my various hearings, which I refer to in Paragraphs "8" to "14" of this application, are as follows: In 1937 I filed my questionnaire and statement with the Committee on Character and Fitness, and had a first meeting with this Committee, which consisted of Mr. Sol Stroock, as Chairman, and Mr. Basil O'Connor and Mr. Millard Ellison as the other two members of this Committee, which made a committee of three members only. At this meeting I was confronted with a letter signed by an attorney, Leo M. Wieder, whose office address I believe is now 1501 Broadway, New York City. This letter claimed that I clerked for the said Leo M. Wieder and that I said disparaging things about him which resulted to his damage in the sum of \$1,000.00.

18. At this meeting I told the said Committee that the letter was a falsehood and that it was instigated by the threat of extortion, the price of which was plainly labeled

in the letter. Mr. Sol Stroock promised a confrontation and an opportunity for me to prove that the letter of Leo M. Wieder was false and motivated by a desire for personal gain.

19. After an interval of several months and an announcement in the Law Journal of the next meeting of the Committee on Character and Fitness, I submitted the affidavit of Samuel Wolbarst, an attorney who was a *partner* in practice with the above mentioned Leo M. Wieder. This [fol. 6] affidavit confirmed that I never served any clerkship in that office and that Mr. Wieder's statements in the said letter were untrue. Mr. Wolbarst appeared at the Appellate Division building, ready and willing to testify under oath before the Committee on Character and Fitness that the said Leo M. Wieder falsely stated the facts and did so in an effort to extract \$1,000.00 from me. Mr. Wolbarst was prepared to testify that based on his knowledge of Mr. Wieder, Mr. Wieder's testimony should not be given credence by this Committee. Mr. Wolbarst was ready to testify that Mr. Wieder permitted betting on horseraces at his office (which caused the dissolution of the partnership) and was prepared to give facts and name names concerning those persons who were in the office engaging in illegal activities— a) Irving Rosenberg who had as a handicapper a man formerly connected with the Morning Telegraph and known only as "Harry"; b) a bookmaker by the name of Goldsmith who phoned the notorious Mr. Ericson in order to place bets with him for the participants in Mr. Wieder's office.

20. Mr. Wieder was presumably incensed against me because I had to sue one, Adolf Hunter, for moneys due me. Mr. Wieder was defense counsel and his cross-examination consisted only of whether I had made disparaging remarks about him (Mr. Wieder). Mr. Wieder interposed this defense against my claim falsely and maliciously with absolute knowledge that his defense was false and conceived in malevolence because Mr. Hunter was then in Canada and safely immune from the jurisdiction of any subpoena of the Court, or of the Committee on Character and Fitness. The Court struck the defense from the record and judgment was rendered in my favor in full.

21. When I was finally called before the Committee, Mr. Stroock had only one sentence to say to me as he did on the three previous occasions and that was "You are excused". This was the meeting at which Mr. Wolbarst was [fol. 7] present and since nothing else transpired, Mr. Wolbarst and I could only infer that the Committee refused a confrontation of Mr. Wieder.

22. I later learned that the said Irving Rosenberg came to my office to collect \$300.00 for Mr. Wieder which would induce Mr. Wieder to retract the statements made in his letter to the Committee. This information was given to the Committee, and at the suggestion of one member, Mr. Herman A. Heydt, was brought to the attention of Mr. Joseph Murphy. Thereafter, two New York City detectives heard Mr. Rosenberg ask for the money in my office for Mr. Wieder. Later, District Attorney Josephs arranged for a time for the payment of the money to Mr. Wieder but Mr. Wieder did not show up at the appointed time. It was Mr. Heydt who concluded that only Mr. Joseph Murphy, Secretary of the Committee on Character and Fitness, could have informed Mr. Wieder not to show up at the appointed time.

23. After a few months my name was again listed in the Law Journal. This itself caused embarrassment to me for I was at that time a practicing Certified Public Accountant with a good reputation and a family consisting of my wife and two children, and parents who required my support. I received calls and questions from people who asked why my name appeared in the Law Journal as often as it did. I felt that my reputation was being frittered away even before I appeared before the Committee for the fourth time and even then was not given an opportunity to confront Mr. Wieder.

24. I got the impression that this fourth meeting was a field day for Mr. O'Connor and Mr. Ellison. Their questions and inferences were filled with innuendos and prejudice, all of which did not have a single thing to do with my clerkship. At the same time, the said Mr. Joseph Murphy, Secretary of the Committee and presumably the right

[fol. 8] arm of the Committee, was taking testimony based upon supposedly credited accuracy, none of which was proven. I now charge that the testimony, through the minutes, was intentionally distorted by the said Mr. Joseph Murphy so that the written testimony was not in fact, but the assumptions of Mr. Joseph Murphy and are not mine, predicated by him on the presumption that the minutes could not be procured by anyone because they were confidential.

25. There is a further background concerning these hearings and the hardly believable activities of Mr. Joseph Murphy. Mr. Murphy, before he assumed his duty as Secretary of the Committee, was a resident of Peekskill, New York. Mr. Murphy owed his position as Secretary to the intervention ~~and~~ recommendation of an attorney in Peekskill, New York, by the name of James Dempsey. Prior to the fourth announcement of my name in the Law Journal as a candidate awaiting admission to the Bar, I had occasion to institute a lawsuit against a client of the said James Dempsey for a fee due me for professional accounting services rendered. Mr. Dempsey made various motions and interposed a counterclaim. The motions were denied and it was apparent that his client would have a judgment against him for my fee. Whereupon Mr. Joseph Murphy called me into the office of the Committee at 51 Madison Avenue, New York City and told me that my admission to the Bar would depend upon my withdrawing the suit against Mr. Dempsey's client. He insisted that unless this were done I would not be admitted and it must be done forthwith. Under the stress and strain in which I found myself and in view of the advantages for which I had worked so long and paid so dearly, I acceded to his demand and withdrew my suit.

[fol. 9] 26. When the fourth meeting was scheduled before the Committee (Mr. Basil O'Connor and Mr. Millard Ellison), it became manifest to me that Mr. Murphy was a tool of Mr. Dempsey whose purpose was to *destroy* me. A client of mine in Peekskill, New York, one Charles Weller, stated that Mr. Murphy, in a conversation with him, told

him that all his actions and recommendations, and falsifications were based on "Dempsey's orders". To impress upon the Court that I am not making wild accusations against people with impeccable character, it is a matter of record that shortly after the incident referred to, Mr. James Dempsey was charged by Mr. Oliver King, an attorney practicing in White Plains, New York, that he, James Dempsey, tampered with juries before whom he tried cases.

27. These protracted hearings, which were a stress and strain upon me, affected my health and my work. My practice deteriorated and in 1944 I suffered a heart attack and my family was destitute and actually evicted from our apartment for non-payment of rent. All this was known to the Committee on Character and Fitness.

28. On or about July 16, 1948 when I filed my application *de novo* and a Committee hearing was had; it was there for the first time that I found out that my wife was called to the office of the Chairman of the Character Committee, and there examined about our life together. My wife became hysterical and passed out completely, because we were deprecated by the Committee for no reason whatsoever except that Mr. Basil O'Connor and Mr. Millard Ellison were in cahoots with Mr. James Dempsey. She was revived and then pressed into the deepest secrecy about not mentioning the incident to me. My wife was never the [fol. 10] same again. She suffered migraine headaches for days on end; she had nightmares and lost consciousness many times during the day. For a long time she became mentally retarded. That, too, was not enough for Mr. Millard Ellison and Mr. Basil O'Connor.

29. The record, though strained and bent, will show how Mr. Basil O'Connor was anxious to determine what my income was in 1948 and how he and Mr. Ellison were planning to disrupt my career and even cut my livelihood down more and more. Mr. Ellison went out of his way to file charges before the Grievance Committee of the New York State Society of Certified Public Accountants by inferring that I had said untruths. Nevertheless, after a thorough

hearing before the New York State Society of Certified Public Accountants I was completely exonerated by the Grievance Committee.

30. Mr. Millard Ellison had at his disposal the knowledge gained in the District Attorney's office and in the Crime Commission. Only he alone could conjure up any situation to fit any possible derogatory false premise by either introducing a false state of fact, or a crooked statement like the one introduced at my hearing by Sylvester Barone; in an alleged transaction whereby Sylvester Barone gave me money for an honest purpose. Whereas, in fact, Sylvester Barone tried to pass off forged warehouse receipts for bonded liquor. It was Robert F. Wagner, Jr., now Mayor of the City of New York, who was then a practising attorney at 120 Broadway, New York City whom I engaged to aid me and in turn exposed the situation.

31. I ask the Court to consider this entire background in connection with the charges which were apparently sustained by the Committee and which referred to my clerkship. The plain facts of the matter are that I had a *Master of Laws* degree and *needed no clerkship*. It would be straining the imagination and credulity of people experienced in [fol. 11] life, in business and in profession for me to lie about a clerkship when it was not necessary for me to have one. It would also appear to me that the believability of one lawyer, Mr. Wolbarst, the partner of Mr. Wieder, the accuser, could be relied upon with the same effect and belief. In spite of all that has passed, I still believe in the principle that a person is innocent until proven guilty. My proof was sidetracked by Mr. Basil O'Connor and Mr. Millard Ellison.

32. One of the items discussed by the Committee was the question of whether I had always been a member in good standing of the New York State Society of Certified Public Accountants. Many thousands of words were spent in discussing what was a mere technicality. The Society had informed me that if I paid up the dues that were then due, I would then be admitted forthwith. The Committee determined that until I was formally reinstated I was not

a member in good standing. The records of the Society and the Secretary of the Society will bear out completely that I have always been a member in good standing except for a period when I was delinquent for non-payment of dues during a depression period and for no other reason, and that there is no derogatory history concerning my membership, except that by the action of the Character Committee I could not earn a sufficient sum to support my family and pay the required dues at the same time. The Committee itself was instrumental in moving obstacles in my path to cut off my livelihood.

33. There were other matters before the Committee, all of which, I believe were explained fully and would leave no inference of anything discreditable to me, certainly not to the extent of denying me admission to the Bar. Although my heart is full and the many years that have elapsed have [fol. 12] given me a minute introspection and analysis of all that has gone before, I realize that I cannot burden this Court unduly and recite in full all the matters reviewed, some of which might appear to be unimportant to this Court.

34. About two years ago, I was sent by a reputable lawyer to Mr. Roger Bryant Hunting, Secretary of the Bar Association at 44 West 44th Street, New York City. Mr. Hunting asked for and received my entire file in the matter. After several weeks Mr. Hunting notified me that he reviewed everything and had come to a conclusion. The conclusions he reached are set forth herein: A) That there is *nothing* in the record or file, or attending documents that could possibly impeach my character; B) All innuendos or inferences of bad character were completely *dispelled*; C) That the Character Committee acted solely on *impressions* that they got of me; and that a mere picturization was enough to destroy a man utterly and completely.

35. There have been times and occasions when the members of the Committee themselves received adverse notorious publicity and were raked over the coals in the public press, yet they continued as members of the Committee. Though nothing has ever been cast on me that I

could not prove to be false, malicious and conjured up by the two members of the Committee, Mr. Basil O'Connor and Mr. Millard Ellison, I have to endure 24 years of torturous suffering, and my family brought to disgrace, only because I studied law and achieved a Master of Laws at great expense and deprivation to my family, especially when a depression holocaust engulfed the United States. Those facts were completely rejected by the Character Committee.

36. I trust that I have submitted enough to warrant a hearing before the present Committee to determine my [fol. 13] present status and to give me the opportunity of proving to the Committee that those statements which I have made are in fact the truth. I believe that I have not only been prosecuted but persecuted by people who have their own particular axes to grind and who have no compassion or regard for the rights and welfare of others. I have made bold statements and I am prepared to prove those statements by those rules of evidence which this Court recognizes. I again ask for the opportunity to do so and to sustain my own burden of proving before a tribunal of this Court the worth and merit of my petition.

Wherefore, I pray this Court that it afford me the opportunity: a) of appearing before the Committee on Character and Fitness; b) to grant leave to appear before a Referee of this Court to hear and determine the facts alleged by myself and report back to the Appellate Division: c) that if the Court feels that I have been punished, harassed and deprived of an equal opportunity under the law, that I be admitted on its own motion forthwith.

Dated: New York, the 22nd day of May, 1961.

Nathan Willner, Petitioner.

[fol. 14] *Duly sworn to by Nathan Willner, jurat omitted in printing.*

[fol. 15]

IN THE APPELLATE DIVISION OF THE SUPREME COURT
OF NEW YORK

FIRST JUDICIAL DEPARTMENT

[Title omitted]

ORDER DENYING MOTION FOR LEAVE TO FILE APPLICATION
FOR ADMISSION TO THE BAR—June 29, 1961

The above-named petitioner having moved this Court for an order granting petitioner leave to file his application for admission to the Bar of the State of New York, *de novo*, pursuant to Rule 1(e) of the Rules of Civil Practice; and for other relief,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the petition of Nathan Willner, duly verified the 22nd day of May, 1961, in support of said motion, and after hearing Mr. Nathan Willner, pro se, for the motion, and no one appearing in opposition thereto,

It is ordered that the said motion be and the same hereby is denied.

Enter:

Vincent A. Massi, Clerk.

[fol. 16]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

[Title omitted]

NOTICE OF MOTION FOR LEAVE TO APPEAL—

Dated July 27, 1961

Sirs:

Please Take Notice, that upon the annexed affidavit of Nathan Willner, dated and verified the 27th day of July, 1961, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court, at a

stated term for motions, to be held at the Appellate Division Court House, 25th Street and Madison Avenue, Borough of Manhattan, New York City, on the 6th day of September, 1961 at 1:00 o'clock in the afternoon of that day, for an order granting leave to appeal to the Court of Appeals of the State of New York from the final order of this Court entered in the office of its Clerk on the 29th day of June, 1961, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, N. Y., July 27, 1961.

Yours, etc.,

Dodd, Cardiello & Blair, Attorney for Petitioner,
100 West 42nd Street, New York 36, New York.

To: The Committee on Character and Fitness.

[fol. 17]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION—FIRST DEPARTMENT

[Title omitted]

AFFIDAVIT

State of New York,

County of New York, ss.:

Nathan Willner, being duly sworn, deposes and says:

1. That he resides at 345 East 52nd Street, in the Borough of Manhattan, City of State of New York.
2. That he is a citizen of the United States and a resident of the State of New York, and has been for more than six months prior to the date of this motion.
3. That he was born on November 7, 1900.
4. That he is a certified public accountant having been licensed by the State of New York on January 2, 1936; that his license certificate bears number 5245, and his license has never been revoked or suspended.

5. That he is now and has been since May 15, 1951, a member in good standing of the New York State Society of Certified Public Accountants. That he is now and has been since December 11, 1951, a member in good standing of the American Institute of Accounts, a national organization of Certified Public Accountants.

6. That he graduated from the School of Commerce of New York University in 1923, with the degree of Bachelor of Commercial Science, and from the Law School of New York University in 1930, with the degree of Master of Laws.

7. That he passed the required written examinations for admittance to the Bar, and was duly certified as qualified [fol. 18] filed by the State Board of Law Examiners on or about October 29, 1936. In 1937, he filed his questionnaire and statement with the Committee on Character and Fitness, and after several hearings the said Committee filed its determination that it is "not satisfied and cannot certify that the applicant possesses the character and general fitness requisite for an attorney and counselor at law, as provided by Section 88 of the Judiciary Law." That he has applied to this Court to review the determination of the Character Committee in 1943 and that he has made other petitions throughout the years without success.

8. That he has left no stone unturned to clear his name of the implications and innuendoes which have crept into the file, and that as a matter of fact he has lived an exemplary life as indicated by the fact that since he was admitted to the Tax Court of the United States in 1928 he has remained and is at present in good standing before this Court. That he has handled numerous matters involving trust and has been held in high esteem by clients and many others of the Certified Public Accountant Fraternity. That he feels, with all due respect to this Court, that he can get a fair hearing in a new forum.

Wherefore, Plaintiff respectfully requests that this Court grant him an order permitting leave to appeal to the Court of Appeals, on the ground that there is no sufficient basis

in the record for denying petitioner's application for admission to the Bar.

Nathan Willner.

Sworn to before me this 27th day of July, 1961.

James A. Cardiello, Notary Public, State of New York,
No. 31-5806835, Qualified in New York County, Commission
Expires March 30, 1963.

[fol. 19]

IN THE SUPREME COURT OF NEW YORK
APPELLATE DIVISION—FIRST DEPARTMENT

[Title omitted]

ORDER DENYING MOTION FOR LEAVE TO APPEAL—
September 21, 1961

The above named petitioner having moved for leave to appeal to the Court of Appeals from the order of this Court, entered on the 29th day of June, 1961,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Nathan Willner in support of said motion, and after hearing Messrs. Dodd, Cardiello & Blair for the motion, and no one appearing in opposition thereto,

It is hereby unanimously ordered that the said motion be and the same is hereby denied.

Enter:

Vincent A. Massi, Clerk.

[fol. 20]

IN THE COURT OF APPEALS, STATE OF NEW YORK

In the Matter of the Application of
NATHAN WILLNER, Petitioner,
for an Order permitting him to file his Application
for his Admission to the Bar.

NOTICE OF MOTION FOR LEAVE TO APPEAL—

Dated December 31, 1961

Sirs:

Please Take Notice, that on the affidavit of Nathan Willner, verified the 21st day of December, 1961, the order of the Appellate Division, First Judicial Department, filed and entered in the 19th day of June, 1961, which order denied the application of the above named Nathan Willner for an order granting him leave to file his application for admission to the Bar of the State of New York, pursuant to Rule 1 (e) of the Rules of Civil Practice and the order of the said Appellate Division, filed and entered in the Office of the Clerk of said Appellate Division on the 21st day of September, 1961, which denied the motion of the said petitioner, Nathan Willner, for leave to appeal to the Court of Appeals of the State of New York, and on the record of the Court below, the said petitioner, Nathan Willner, will move before the Court of Appeals, at a Stated Term thereof, to be held in the Court of Appeals Hall, Eagle Avenue, City of Albany, New York, on the 8th day of January 1962, at the opening of court, for an order granting him permission to appeal to the Court of Appeals from the order of said Appellate Division, filed and entered on June 29, 1961.

[fol. 21] Petitioner also prays the Court that it waive the provision of Rule XXI of the rules of the Court requiring that the papers on a motion for leave to appeal be printed, and to accept typewritten papers in lieu thereof. The rea-

sons are set forth in the affidavit of petitioner, verified on December 4, 1961, and hereto annexed.

And for such other and further relief as may be fair, just and equitable.

Dated, December 21st, 1961.

Yours etc.

Henry Waldman, Attorney for Petitioner, 5 Beckman Street, New York 38, N. Y.

To: Committee on Character and Fitness, First Judicial Department.

[fol. 22]

IN THE COURT OF APPEALS, STATE OF NEW YORK

[Title omitted]

PETITIONER'S MOVING AFFIDAVIT

State of New York,
County of New York, ss.:

Nathan Willner, being duly sworn, deposes as follows:

I am the petitioner above named.

This affidavit is made by me in support of my application to the Court of Appeals for leave to appeal to that Court from the final order of the Appellate Division, First Department, which denied my motion for admission to the Bar. I moved in the said Appellate Division for permission to appeal but the motion was denied.

I reside at 345 East 52nd Street, Manhattan, New York City. I am a citizen of the United States, by reason of my having been born in the United States on November 7th, 1900. I am a certified public accountant, having been licensed as such by the State of New York on January 3rd, 1936; my license number is 5245. Said license has never been suspended or revoked. I am a member in good standing of the New York State Society of Certified Public Accountants. I am a member in good standing of the American Institute of Certified Public Accountants, which is the rec-

ognized national organization of Certified Public Accountants; and The New York State Society of Certified Public Accountants.

I graduated from the School of Commerce of New York University in 1923 with the degree of Bachelor of Commercial Science, and from the Law School of New York University in 1930 with the degree of Bachelor of Laws; and in 1934 with the degree of Master of Laws from the same Law School. I passed the required written examination for admission to the Bar, and was duly certified as qualified by State Board of Law Examiners on or about October 29, 1936. In 1937, I filed my questionnaire and statement with the Committee on Character and Fitness. Several hearings on my application were had before the Committee and in October, 1938, the Committee filed a report with the Appellate Division that it is "not satisfied and cannot certify that the applicant possesses the character and general fitness requisite for an attorney and counselor at law, as provided by Section 88 of the Judiciary Law", without stating any reason. The conclusion was wholly based upon a personal impression, and not upon a validly determined finding of fact.

Ever since, I have been trying, by repeated applications to be admitted to the Bar, but without success.

A copy of my petition, dated May 22, 1961 and notice of motion was duly and timely served on the Secretary of the Committee on Character and Fitness, at his office, 51 Madison Avenue, New York City. On the return day of the motion, June 6th, 1961, the Committee failed to appear, either in person by a member, or its secretary, or by the service of an answer to my petition. It wholly ignored the proceeding. The Court however denied my application unanimously, and without opinion. On my subsequent motion for leave to appeal to the Court of Appeals, the Committee pursued the same course—it failed to appear in opposition, either in person, or by an opposing affidavit; it again ignored the motion. Again the Appellate Division denied the motion, unanimously and without opinion.

I did not serve the Committee with a copy of the orders, for the reason that it had not appeared, and the further reason that it was the prevailing party, a rather anomalous situation. However, the Committee was timely served with the motion papers of both motions, and will be timely served with the moving papers and brief on this motion.

An examination of the record in this proceeding will disclose that the Committee reported adversely to my admission mainly, and perhaps, solely, because of accusations made by two lawyers, Leo M. Wieder who was discredited and James Dempsey who was brought up on charges of jury tampering. To the best of my knowledge, they were made in writing, whether by simple letters or by formal affidavits, I do not know. In either way, they were ex parte statements, which had common law rules of procedure and evidence followed, would have been clearly inadmissible.

I was never confronted by either accuser, and hence, I was not afforded the opportunity of cross examining them, though I was always prepared to do so.

An application for admission to the Bar is a formal special proceeding, in nowise different than any such proceeding. The applicant must satisfy the Court that he possesses the knowledge of law required; this he proves by the certificate of the Board of Law Examiners, which [fol. 25] avers that he has been examined and found qualified. And the applicant must further prove that he is a person of good moral character, which he does by showing that the Committee on Character and Fitness has certified to the Court its approval of his character and fitness. The fact that the Appellate Division is the court of origin or of first instance is no reason for ignoring the fundamental common law rules of evidence, particularly the rule—which antedates Magna Charta—that an accused has the right to be confronted by his accuser, with the right to cross examine him. I have been informed (largely through questions asked me at hearings before the Committee) that certain letters, and probably other oral and written accusations were made against me. However, I was never afforded the opportunity of confronting my accusers, of

having the accusers sworn and cross examining them, and the opportunity of refuting the accusations and accusers.

In other words, I was denied the right of presenting my defense because of the prejudice of the Committee at the dictates of the aforementioned lawyers.

An application for admission, being a formal special proceeding, culminates in a formal order or decree, either granting admission or denying it. Such an order or decree should be based on findings of fact and conclusions of law. Facts can only be found on competent evidence, properly adduced from witnesses, who must confront the parties, be sworn and submit to cross examination. An ex parte Statement, oral or written, is not competent evidence, and [fol. 26] a finding of fact, based thereon, is not a foundation upon which a decree can rest, and could be solicited by the members of the Character Committee.

The evidence upon which the Committee based its refusal to recommend my admission was not competent evidence. Hence, not only have I been deprived of a fair trial, but of any trial at all. A fair trial is part of "due process".

Admission to the Bar is deemed a privilege. But is it a privilege in the true sense of the word? Webster defines the word as: "a right, immunity, benefit or advantage enjoyed by a person or body of persons beyond the common advantage of other individuals". A privilege which is available to everyone, may not be denied to anyone, except for sound legal reasons, proved by competent evidence, and not by falsified impressions.

Involved here is an angle which may not be overlooked. Lawyers are officers of the courts and therefore, part of the personnel of the judiciary system of the state. So, the state deems it necessary to invite persons to engage in the study of law and impliedly agrees that every person who has studied law for a certain period, and by the test of examination is found to have sufficient knowledge of it, and further, is of good moral character and fitness, will be licensed to practice law as a profession.

The person who accepts the implied invitation, attends law school for three or four years and qualifies for admission by passing the Bar examination, is beyond question

entitled to admission, unless he is found to be a person of bad moral character. The Appellate Division refers the [fol. 27] issue of character to its Committee on Character. In a sense, every member of the Committee is a referee. The question of character is one of the two issues involved in the proceeding, and like any issue of fact, should be determined by a formal trial or hearing, and in accordance with common law rules of procedure and evidence, followed by findings of fact and conclusions of law. Such course was not followed here at all, and had not even the semblance of affording such opportunity. The Committee acted as if affronted.

In this and in all proceedings brought by me in the Appellate Division and in the higher courts, my applications for admission were denied without opinion. No reason—not even a two line memorandum—accompanied the decisions, despite the fact that I constantly contended that I was deprived of a fair trial, a right to which I was entitled under the United States Constitution and the New York State Constitution, as well.

It should be borne in mind, that a refusal to admit one to the Bar is a stigma which he must bear throughout his life. The smudge affects his family, as well. The fact that a high court has found, as a fact, that by reason of lack of good character, he is unfit to be a member of the Bar, handicaps him in any activity or business he may engage in. In an economic sense he is in no better situation than an ex-convict. That has been fully set forth in the moving papers before the Appellate Division.

I contend that the time, effort and money spent by me in law school is an asset and not a mere privilege. My [fol. 28] counsel will discuss this phase fully in his brief. Should I be granted permission to appeal to this Court, I will limit my contentions to the following:

1. Was I entitled to confrontation of my accusers? To have them sworn as witnesses, and subject them to cross examination?
2. If so, did the denial of confrontation etc. deprive me of a fair trial on the issue of character?

3. Did such denial etc. violate my rights under the Constitution of the United States and under the Constitution of the State of New York, as well?

Nathan Willner.

Sworn to before me this 21st day of December, 1961.

Henry Waldman, Commissioner of Deeds, City of New York, New York County Clerk's No. 126-1, Commission Expires Dec. 20, 1962.

[fol. 29]

IN THE COURT OF APPEALS OF NEW YORK

1

Mo. No. 48

In the Matter of the Application of NATHAN WILLNER, for an Order permitting him to file his application for admission to the Bar, Appellant,

COMMITTEE ON CHARACTER AND FITNESS, FIRST JUDICIAL DEPARTMENT, Respondent.

ORDER GRANTING LEAVE TO APPEAL—January 11, 1962

A motion for leave to appeal to the Court of Appeals &c. in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had;

Ordered, that the said motion be and the same hereby is granted.

[fol. 30]

IN THE COURT OF APPEALS OF NEW YORK

[Title omitted]

NOTICE OF APPEAL—Filed January 23, 1962

Sirs:

Please Take Notice, that Nathan Willner, the above named appellant, hereby appeals to the Court of Appeals of the State of New York, from the order of the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, made and entered in the Office of the Clerk of said Appellate Division on June 29, 1961, which order denied the motion of said Nathan Willner for leave to file his application for admission to the Bar, and he appeals from each and every part of said order and from the whole thereof.

Said Nathan Willner appeals by permission of the Court of Appeals, evidenced by its order granting permission, dated and entered in the Office of the Clerk of the Court of Appeals on January 11, 1962.

Yours etc.,

Henry Waldman, Attorney for Appellant, 5 Beekman Street, New York 38, N. Y.

To: Clerk of the Court of Appeals, Clerk of the Appellate Division, Committee on Character and Fitness, First Judicial Department.

[fol. 31]

IN THE COURT OF APPEALS OF NEW YORK

25

In the Matter of the Application of
NATHAN WILLNER, Appellant,
for an Order Permitting him to file his application
for admission to the Bar,

COMMITTEE ON CHARACTER AND FITNESS, FIRST JUDICIAL
DEPARTMENT, Respondent.

ORDER OF AFFIRMANCE—April 5, 1962

This cause having been argued by Henry Waldman, Esq.,
of counsel for the appellant, and having been submitted
upon the part of the respondent, and due deliberation having
been thereupon had, it is

Ordered and Adjudged that the order appealed from be
and the same hereby is affirmed without costs. No opinion.

[fol. 32]

IN THE COURT OF APPEALS

[fol. 33]

REMITTITUR—April 5, 1962

No. 113

In the Matter of the Application of
NATHAN WILLNER, Appellant,
for an Order Permitting him to file his application
for admission to the Bar,
COMMITTEE ON CHARACTER AND FITNESS, FIRST JUDICIAL
DEPARTMENT, Respondent.

Be It Remembered, That on the 9th day of March in the
year of our Lord one thousand nine hundred and sixty-two,

Nathan Willner, the appellant in this cause, came here unto the Court of Appeals, by Henry Waldman, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Committee on Character and Fitness, First Judicial Department, the respondent in said cause, for whom there was no appearance.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 34] Whereupon, The said Court of Appeals having heard this cause argued by Mr. Henry Waldman, of counsel for the appellant, no appearance for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs. And thereafter a motion to amend the remittitur having been granted this remittitur is hereby amended by adding thereto the following; Upon the appeal herein there was presented and necessarily upon a question under the Constitution of the United States, viz: Appellant contended that he was denied due process of law in violation of his constitutional rights under the Fifth and Fourteenth Amendments of the Constitution. The Court of Appeals held that appellant was not denied due process in violation of such constitutional rights.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, First Judicial Department, there to be proceeded upon according to law.

[fol. 35] Therefore, it is considered that the said order be affirmed, without costs, &c. as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, First Judicial Department, before the Justices thereof, according to the form of the statute in

such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,
Albany, April 5, 1962.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Raymond J. Cannon, Clerk.

[fol. 36]

IN THE COURT OF APPEALS OF NEW YORK

1

Mo. No. 331

In the Matter of the Application of
NATHAN WILLNER, Appellant,
for an Order permitting him to file his application
for admission to the Bar,

COMMITTEE ON CHARACTER AND FITNESS, FIRST JUDICIAL
DEPARTMENT, Respondent.

ORDER AMENDING REMITTITUR—April 26, 1962

A motion to amend the remittitur in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted. Return of the remittitur requested and, when

returned, it will be amended by adding thereto the following:

Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz: Appellant contended that he was denied due process of law in violation of his constitutional rights under the Fifth and Fourteenth Amendments of the Constitution. The Court of Appeals held that appellant was not denied due process in violation of such constitutional rights.

And the Appellate Division of the Supreme Court, First Judicial Department, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

[fol. 37]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—June 25, 1962

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this petition.

[fol. 38]

SUPREME COURT OF THE UNITED STATES

No. 140, October Term, 1962

NATHAN WILLNER, Petitioner,

vs.

COMMITTEE ON CHARACTER AND FITNESS, ETC.

ORDER DENYING MOTION OF RESPONDENT TO DISMISS
THE WRIT OF CERTIORARI—November 13, 1962

On Consideration of the motion of the respondent to dismiss the writ of certiorari,

It Is Ordered by this Court that the said motion be, and the same is hereby, denied.

in the
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1962

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NO. 140, SUMMARY CALENDAR

NATHAN WILLNER,

PETITIONER APPELLANT,

vs.

COMMITTEE ON CHARACTER AND FITNESS,
APPELLATE DIVISION OF THE SUPREME
COURT OF THE STATE OF NEW YORK,
FIRST JUDICIAL DEPARTMENT.

RESPONDENT APPELLEE.

It hereby is stipulated by and between the respective
attorneys for the above named parties, that the ninety six
items, set forth in Respondent-Appellee's "Amended Cross
Designation" be included and made part of the Record, but that
the printing of same be dispensed with.

Dated, New York N.Y., October 16, 1962.

Henry Goldstein
Attorney for Petitioner-Appellant

Lawrence Goldstein
Attorney for Respondent-Appellee

Frank D. Tolson
Frank D. Tolson
General